



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

November 30, 2021

Memorandum for: Deputy Commissioner, Trials

Re: **Detective Manuel Cordova**
Tax Registry No. 918880
Narcotics Borough Manhattan North
Disciplinary Case No. 2019-20070

Detective Raymond Low
Tax Registry No. 936985
Narcotics Borough Manhattan North
Disciplinary Case No. 2019-20071

Detective Xavier Reynoso
Tax Registry No. 939302
Narcotics Borough Manhattan North
Disciplinary Case No. 2019-20072

The above named members of the service appeared before Assistant Deputy Commissioner Nancy R. Ryan remotely on March 4, March 9, and April 16, 2021, charged with the following:

DISCIPLINARY CASE NO. 2019-20070

1. Detective Manuel Cordova, on or about August 18, 2017, at approximately 0315 hours, while assigned to NARCBMN and on duty, in the vicinity of 1878 Lexington Avenue, New York County, wrongfully used force, in that he used physical force, in that he kneed Robert Ortiz in the leg without police necessity

P.G. 221-02, Page 2, Prohibitions 11 & 12

USE OF FORCE

2. Detective Manuel Cordova, on or about August 18, 2017, at approximately 0315 hours, while assigned to NARCBMN and on duty, in the vicinity of 1878 Lexington Avenue, New York County, wrongfully used force, in that he used physical force, in that he kneed Robert Ortiz in the leg without police necessity

P.G. 221-01, Page 3, Prohibitions 2

FORCE GUIDELINES

DETECTIVE MANUEL CORDOVA
DETECTIVE RAYMOND LOW
DETECTIVE XAVIER REYNOSO

DISCIPLINARY CASE NO. 2019-20070
DISCIPLINARY CASE NO. 2019-20071
DISCIPLINARY CASE NO. 2019-20072

DISCIPLINARY CASE NO. 2019-20071

1. Detective Raymond Low, on or about August 18, 2017, at approximately 0315 hours, while assigned to NARCBMN and on duty, in the vicinity of 1878 Lexington Avenue, New York County, abused his authority as a member of the New York City Police Department, in that he strip searched Robert Ortiz without sufficient legal authority.

P.G. 208-05, Page 2, Paragraph C(1)

**ARREST – GENERAL
SEARCH GUIDELINES**

DISCIPLINARY CASE NO. 2019-20072

1. Detective Xavier Reynoso, on or about August 18, 2017, at approximately 0315 hours, while assigned to NARCBMN and on duty, in the vicinity of 1878 Lexington Avenue, New York County, wrongfully used force, in that he pushed Robert Ortiz's head against a metal gate forcefully several times without police necessity.

P.G. 221-02, Page 2, Prohibitions 11 & 12

USE OF FORCE

In a Memorandum dated June 8, 2021, Assistant Deputy Commissioner Nancy R. Ryan found Detective Manuel Cordova guilty of specification no. 1 and not guilty of specification no. 2; Detective Raymond Low was found guilty of the sole specification; and Detective Xavier Reynoso was found guilty of the sole specification in Disciplinary Case Nos. 2019-20070, 2019-20071, and 2019-20072, respectively.

I have reviewed and considered the entire record in this matter, including the surveillance videos, and disapprove of Assistant Deputy Commissioner Ryan's guilty findings. I have determined that based on the totality of the circumstances, a finding of not guilty with regard to each specification is warranted.

In order of occurrence, Detective Reynoso was alleged to have wrongfully used force during the initial arrest of the suspect in this matter. A thorough review of the surveillance video, supported by the testimony of the Detectives, demonstrates that the force used in order to effect the arrest was both reasonable and necessary in order to safely place the resisting suspect into handcuffs. The situation was potentially dangerous for the Detectives and only with the use of necessary force was the arrest successfully made.

Next, Detective Cordova was alleged to have wrongfully used force, after the arrest was made, while the Detectives were trying to perform a Frisk/Field search, while the arrestee was resisting those efforts. Again, a thorough review of the surveillance video, along with the Detectives' testimony, supports the conclusion that a very limited

DETECTIVE MANUEL CORDOVA
DETECTIVE RAYMOND LOW
DETECTIVE XAVIER REYNOSO

DISCIPLINARY CASE NO. 2019-20070
DISCIPLINARY CASE NO. 2019-20071
DISCIPLINARY CASE NO. 2019-20072

amount of necessary force was required in order to gain compliance from with the Detectives' testimony, supports the conclusion that a very limited amount of necessary force was required in order to gain compliance from the arrestee in order to complete the Frisk/Field Search at that time. The force used by Detective Cordova was measured and very limited, but sufficient to enable the Detectives to complete the Frisk/Field Search.

Finally, Detective Low was alleged to have strip-searched the suspect at the arrest location. Detective Low was actually performing a "Frisk/Field Search" as described and authorized within Patrol Guide Procedure 208-05. This procedure directly addresses situations where, as here, immediately after an arrest is made, a Detective will frisk an arrested individual, and then perform a limited search to remove unusual objects that are present *under* the individual's clothing, precisely as happened in this matter, when Detective Low removed the bag of narcotics from inside the arrestee's pants. Further, I have noted that the surveillance video clearly shows that there was not any exposure of the arrestee's private parts to any members of the public during the Frisk/Field Search.

I have considered the totality of the issues and circumstances in this matter and determined that Detective Cordova, Detective Low, and Detective Reynoso are not guilty of all specifications and will receive no disciplinary action in Disciplinary Case Nos. 2019-20070, 2019-20071, and 2019-20072, respectively.

A handwritten signature in black ink, appearing to read "Dermot Shea", written in a cursive style.

Dermot Shea
Police Commissioner



POLICE DEPARTMENT

June 8, 2021

-----X
In the Matter of the Charges and Specifications

- against -

Detective Manuel Cordova
Tax Registry No. 918880
Narcotics Borough Manhattan North

Case No.
2019-20070

Detective Raymond Low
Tax Registry No. 936985
Narcotics Borough Manhattan North

Case No.
2019-20071

Detective Xavier Reynoso
Tax Registry No. 939302
Narcotics Borough Manhattan North

Case No.
2019-20072

-----X
At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Nancy R. Ryan
Assistant Deputy Commissioner Trials

APPEARANCES:

For the CCRB:

Di'Indra Forgenie, Esq.
Civilian Complaint Review Board
100 Church Street, 10th Floor
New York, NY 10007

For the Respondent:

James Moschella, Esq.
Karasyk & Moschella, LLP
233 Broadway – Suite 2340
New York, NY 10279

To:

HONORABLE DERMOT F. SHEA
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

CHARGES AND SPECIFICATIONS

Disciplinary Case No. 2019-20070

1. Detective Manuel Cordova, on or about August 18, 2017, at approximately 0315 hours, while assigned to NARCBMN and on duty, in the vicinity of 1878 Lexington Avenue, New York County, wrongfully used force, in that he used physical force, in that he kned Robert Ortiz in the leg without police necessity.

P.G. 221-02, Page 2, Prohibitions 11 & 12

FORCE GUIDELINES

2. Detective Manuel Cordova, on or about August 18, 2017, at approximately 0315 hours, while assigned to NARCBMN and on duty, in the vicinity of 1878 Lexington Avenue, New York County, wrongfully used force, in that he used a chokehold, by placing his arm around the neck of Robert Ortiz.

P.G. 221-01, Page 3, Prohibition 2

FORCE GUIDELINES

Disciplinary Case No. 2019-20071

1. Detective Raymond Low, on or about August 18, 2017 at approximately 0315 hours, while assigned to NARCBMN and on duty, in the vicinity of 1878 Lexington Avenue, New York County, abused his authority as a member of the New York City Police Department, in that he strip-searched Robert Ortiz without sufficient legal authority.

P.G. 208-05, Page 2, Paragraph C(1)

ARRESTS – GENERAL SEARCH
GUIDELINES

Disciplinary Case No. 2019-20072

1. Detective Xavier Reynoso, on or about August 18, 2017 at approximately 0315 hours, while assigned to NARCBMN and on duty, in the vicinity of 1878 Lexington Avenue, New York County, wrongfully used force, in that he pushed Robert Ortiz's head against a metal gate forcefully several times without police necessity.

P.G. 221-02, Page 2, Prohibitions 11 & 12

USE OF FORCE

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on March 4, March 9, and April 16, 2021. Respondents, through their counsel, entered pleas of Not Guilty to the subject charges. The CCRB called Robert Ortiz as its witness. Respondents called Lieutenant Kenan Akaydin as their witness and testified on their own behalves. A stenographic transcript of

the trial record has been prepared and is available for the Police Commissioner's review. Having reviewed all of the evidence in this matter, I find Respondent Cordova Guilty of Specification 1 and Not Guilty of Specification 2 and recommend a penalty of the loss of 15 vacation days; I find Respondent Low Guilty and recommend a penalty of the loss of 25 suspension days and one year of dismissal probation; and I find Respondent Reynoso Guilty and recommend a penalty of the loss of 10 vacation days and 10 suspension days.

ANALYSIS

It is undisputed that on August 18, 2017, at approximately 0315 hours, Respondents Cordova, Low, and Reynoso were on duty in plain clothes, in an unmarked van in the area of 1878 Lexington Avenue in Manhattan. After Mr. Robert Ortiz exited an apartment at that address, he was arrested by Respondents. He was charged with, and convicted of, possession with intent to distribute controlled substances. The issues in this case are whether, during that arrest Mr. Ortiz was placed in a chokehold and kneed by Respondent Cordova; was strip-searched by Respondent Low; and had his head pushed into a metal gate by Respondent Reynoso.

At trial, Robert Ortiz testified that at the time of the incident, he was on Lexington Avenue between 116th and 117th Streets. He was "just standing there;" smoking a cigarette outside of a building and talking to two women. He was in the area to return car keys to a friend. He admitted that his phone and wallet were in his pocket and looked bulky, although he did not have any weapons on his person. Ortiz entered the building when someone let him in. He stayed for only three to four minutes because his friend did not want to come with him to a bar. When

Ortiz left, he saw “people running towards me that I didn’t know.” He did not realize the men were police. (Tr. 37-41, 63)

Ortiz saw Respondent Reynoso running towards him and Ortiz feared for his life because he was in an area that he knew to be “high in crime.” He said, “My natural instinct was to back up to see if they wanted a confrontation or if somebody pulled out a weapon: a knife, a gun, anything.” Ortiz was backpedaling and trying to see what the people were trying to do to him. Respondent Reynoso grabbed Ortiz’s shirt and swung him into the gate, face first, at which point Ortiz realized the men were police, although he was confused because they did not show him their ID. Ortiz felt “a lot of pressure...behind me,” which he thought was an elbow on his back. Respondent Cordova approached and also grabbed Ortiz and tried to push him towards the gate. Ortiz claimed that Respondent Cordova, who was behind him, then began to choke him: “Basically, he got...me by my neck. He threw his forearm around my neck like he was trying to apply a chokehold to me and...he starts to choke me.” Ortiz asserted that Respondent Cordova wrapped his hands around Ortiz’s neck: “I felt a lot of pressure in the middle of my neck where it stopped me from breathing. I was still trying to breathe at the time, but it was very restricted for me.” He felt “a little out of breath” and was unable to do anything to fight back. (Tr. 46-51, 66, 134-142)

As Ortiz felt pressure on his neck, he moved his arms up to his neck and told the officers he was not breathing. At that point, Respondent Reynoso grabbed his right arm and started twisting it. In response, Ortiz “slouched over [and] my head got pushed into the gate several times.” He contended that Respondent Reynoso shoved the back of his head into the gate three to four times. Ortiz felt a great deal of pressure and pain. Respondent Low then arrived and grabbed Ortiz’s left arm, trying to place handcuffs on him. He denied threatening the officers or

trying to reach for their belts or weapons. Instead, he told them, "I don't have anything on me; I have [my] ID," and asked to be let go from the chokehold. (Tr. 51-58)

Ortiz testified that Respondents then threw him to the ground and he felt kicks and elbows striking his back and leg, and someone's knee on the back of his leg. He described that "they all fell on top of" him. Next, Respondents pulled him back up after placing him in handcuffs and asked him whether he had marijuana. They then began searching his pockets and removed his wallet. Initially, they patted him down but then Respondent Low reached inside his pants with no gloves on. Ortiz asked what he was doing. Respondent Low touched Ortiz's penis and buttocks while searching inside his briefs. Ortiz said, "I felt embarrassed, disrespected, and just like I was being violated as a human." He tried to explain to Respondent Low that he should not touch him there and that he was supposed to search him at the precinct instead. He wanted Respondent Low to wear gloves to avoid skin-to-skin contact. Ortiz was also upset to be searched in public with people in the vicinity. He was angry and arguing with Respondents. After Respondent Low searched Ortiz's underwear, Respondent Cordova kneed him in the back of his thigh. (Tr. 56, 59-63, 72)

Ortiz claims that as a result of the incident, he suffered bruises and marks to his wrist, thigh, ribs and face. Ortiz's neck was sore due to Respondent Cordova's chokehold. His head hurt and he felt lightheaded, because of Respondent Reynoso's pushing his head into the gate. (Tr. 58-59, 73)

Ortiz admitted he was convicted of the sale of a controlled substance in 2012 and spent four years in prison. Additionally, he pleaded guilty to possession of drugs six weeks prior to the incident with Respondents on August 18, 2017. In 2019, he was convicted of burglary. He

acknowledged other convictions as well, for theft of services, unauthorized use of a vehicle and criminal possession of a weapon. Although he was arrested and convicted of possessing cocaine with intent to distribute on the night in question, Ortiz denied that he in fact possessed or sold cocaine that night. He specifically denied that he sold cocaine to the person that let him into the building and instead insisted that he went upstairs to his friend's apartment to return his keys. He claimed his memory of how long he was in the building was hazy, and admitted that he initially told CCRB he had been there for 10 or 15 minutes, before testifying that he was there for only three minutes, after reviewing the video. (Tr. 77, 79-83, 91-93, 122-29)

Ortiz initially stated that he only filed a CCRB complaint against Respondents a year after the incident because he did not previously know about the CCRB. However, his memory was refreshed with grand jury testimony in which he described making a CCRB complaint prior to the incident. Ortiz then said that he did not "recall about the CCRB" at the time of the subject incident because he "was going through a lot of things" such as legal problems. He also indicated that both the prior complaint and instant matter were referred to CCRB by his mother. Ortiz agreed that he had a pending lawsuit concerning the incident with Respondents, for which he is seeking damages of \$14 million. He conceded that, although he told the grand jury in his criminal case that Respondents had searched his private area, he never mentioned the chokehold before the grand jury because his "main issue" was the search. (Tr. 106-13, 122, 127, 145-46)

Respondent Low testified that at the time of the incident, he was conducting "buy-and-bust operations" with Manhattan North Narcotics, along with Respondents Reynoso and Cordova and other MOS. Respondents were in the "chase auto," which is used to apprehend suspects. Respondents and the others were working in the 25 Precinct because it had a "high crime volume and also complaint(s) of narcotic sales." (Tr. 178-80)

Respondent Low noticed Ortiz because he was by himself and “standing outside doing nothing” late at night when no stores were open, which Respondent Low considered suspicious. Eventually, Ortiz had a brief conversation with two females, who then left. After a few moments, Ortiz walked into the building and Respondent Low could see through the glass door that Ortiz walked up a few steps, reached into the back of his waist and pulled out a plastic sandwich bag. He removed smaller bags from a larger one. Ortiz then received money from an individual, whom Respondent Low could not see (other than his feet) because there was a wall blocking the view. In Respondent Low’s training and experience, narcotics are often stored in such bags especially in the back area of the waist, thus he believed a narcotics transaction was taking place. Respondent Low exited the vehicle and ran into the building to try to stop the purchaser. However, he was unable to find that suspect and ran back downstairs. (Tr. 181-84, 189-90, 218-22, 229-30, 235, 274-75)

When Respondent Low left the building, he looked to his left and saw a scuffle involving Respondents Reynoso and Cordova with Ortiz. Respondent Cordova’s chest was against Ortiz’s back. Respondent Low immediately ran over to assist his colleagues in apprehending Ortiz, who was resisting by locking his hands together, “trying to hold onto the front waist area,” and tensing his body. He grabbed Ortiz’s right hand followed by the left, at which point he took Ortiz to the ground. Respondent Low tackled Ortiz “to decrease the amount of leverage that he has in order to resist back against us....And if he’s on the ground, there’s nowhere to run.” As this was happening, Respondents Reynoso and Cordova were instructing Ortiz to “stop resisting,” and Respondent Low was telling Ortiz that he was grabbing his hand. Respondent Low denied seeing Respondent Cordova apply a chokehold or Respondent Reynoso slam Ortiz’s head into the gate, as he was focused on Ortiz’s hands. (Tr. 192-94, 251-54)

Once Ortiz was handcuffed, Respondent Low intended to search him, but he was hunching forward and fidgeting. Based on Respondent Low's training, it appeared "as if he's trying to hide the front area of his waistband." When Respondent Low did manage to search Ortiz, he started with his pockets, then the rear waist area, where he did not find anything. Finally he searched the front waist area, where he felt "an object." He pulled Ortiz's pants forward and retrieved a plastic Ziploc bag of cocaine from underneath the underwear, and threw the bag onto the ground. He denied using any device during the search but acknowledged that he did not wear gloves. Although he could not remember who held the flashlight, Respondent Low testified that one of his partners was shining a flashlight on the area of Ortiz's pants; while that was happening, Respondent Low was searching the pants and peering inside them. No members of the public were in the vicinity when he searched Ortiz. (Tr. 194-98, 266)

Respondent Low characterized the search as "a normal field or frisk search," which he had been trained to conduct at the academy. In Respondent Low's opinion, the search of Ortiz was "absolutely not" a strip search because Respondents never removed or pulled down any clothing, although he admitted that he did pull Ortiz's pants and underwear away from his body, gaining a view of his genitalia, during the course of the search. He had stated earlier, during a CCRB interview, that he did not initially feel anything before pulling back the waistband. Respondent Low considered it necessary to search Ortiz at the scene rather than wait until returning to the precinct, because Ortiz could have destroyed evidence or used something on his person to harm himself. Respondent Low did not ask a supervisor for permission before searching Ortiz on the sidewalk. (Tr. 200-02, 262-67, 272-73, 279, 285)

Respondent Cordova testified that he was the operator on the night in question. Much of his testimony echoed that of Respondent Low with respect to noticing Ortiz, watching what he

believed to be a narcotics transaction, etc. Respondent Cordova saw Respondent Low move to the side of the building's entrance and Respondent Cordova backed the RMP out of view of the lobby, so that anyone leaving the building would not immediately spot the vehicle. (Tr. 295-99)

Next, Ortiz exited the building and turned left; Respondents Reynoso and Cordova followed him. Respondent Cordova then saw Respondent Reynoso in a struggle with Ortiz. After a few seconds, Respondent Cordova reached Ortiz and grabbed his right shoulder and back and "finally [got] a hold of him." He proceeded to slide to Ortiz's back while maintaining the grip on his arm. At that point, he, Respondent Reynoso and Ortiz all went up against the storefront's gate. Ortiz was not complying: he was "tensing up [and] pulling his arms." In short, he would not comply with efforts to handcuff him. While attempting to handcuff Ortiz, Respondent Cordova employed a body lock or seat belt hold, with one arm over the shoulder and one under the armpit. He admitted that his radio was in his hand the whole time, and prevented him from locking his hands properly. Consequently, the hold broke and the radio stayed by Ortiz's jaw line and lower lip. Respondent Cordova could feel that his hands and wrist were on Ortiz's mouth and jaw line as well. Respondents only got Ortiz in handcuffs after Respondent Low arrived and joined their efforts and Ortiz was brought to the ground. Respondent Cordova did not recall either himself or Ortiz saying anything during the entire duration of the struggle. (Tr. 300-10, 318-19, 323-24, 366-67, 371, 384-85)

Respondent Cordova denied that he intended to restrict Ortiz's breathing or that he was exerting pressure on Ortiz's throat or neck. He stated that he had been trained by the Department in the use of a seatbelt hold technique, and that his understanding has always been that chokeholds are illegal. (Tr. 314-20)

Respondent Cordova further testified that once Ortiz was in handcuffs, the other Respondents searched him. He did not recall Ortiz's pants and underwear being pulled forward or his genitals being exposed. Respondent Cordova remembered Ortiz's bending at the waist while still standing by the storefront. Respondents recovered drugs, which fell to the ground. Respondent Cordova admitted that he used "[his] knee to hit him in the inner thigh on two occasions." He also said, "Knowing myself as an officer, a detective for 24 years...the knee wouldn't have been for no reason. It would have been the destruction of evidence. He may have tried to step on it, kick it...It would have been in response to something that occurred during the search or after the search." After viewing the video, Respondent Cordova also noted that Ortiz appeared to be tensing up and bending his waist, preventing officers from searching him. He made contact with the "meaty part" of Ortiz's thigh rather than a bone. He denied trying to injure Ortiz. (Tr. 329-34, 374-75)

Respondent Reynoso testified that the night of the incident was his first time working with Respondents Cordova and Low. During the alleged narcotics transaction, Respondent Reynoso did not have visibility from his place in the rear of the vehicle and received information from Respondent Low. When Ortiz exited the building, Respondent Reynoso went to pursue and arrest him. He was the first to reach Ortiz and said, "Police, don't move." He admittedly did not remember whether his badge was visible at that time. At that point, Ortiz ran "a car length from" Respondent Reynoso, who "was able to hold him to his garments, to his t-shirts," and the pair ultimately arrived at the gate. Respondent Reynoso held Ortiz there to prevent his running away and to handcuff him. (Tr. 390-95, 403-07)

Once Respondent Reynoso caught up with Ortiz, he found him to be resisting: "flailing his arms, stiffening up...putting his hand across his chest with hard tension, and not letting me

rear handcuff him.” After a second or so, Respondent Cordova joined the struggle. Respondent Reynoso continued trying to handcuff Ortiz by using the gate as leverage but Ortiz “kept pushing off the gate.” At the same time, Respondent Reynoso was pushing and pinning Ortiz’s “upper body” against the gate; he initially denied that he remembered pushing Ortiz’s head but admitted that his hand seemed to be against Ortiz’s head in video footage of the incident. Respondent Reynoso did not recall himself or Ortiz saying anything in that moment. Respondent Reynoso was conscious that he had his tactical holster on him and “didn’t know [Ortiz’s] intention.” He tried to use the minimum force, given the circumstances, to arrest Ortiz. Eventually, he and Respondent Low placed Ortiz on the ground and handcuffed him, before standing him back up. (Tr. 395-400, 409, 412-14, 418-23, 430)

Respondent Reynoso further testified that while Respondent Low was trying to search Ortiz, he continued tensing up, “getting rigid” and moving his midsection around. Respondent Reynoso was standing behind Ortiz and thus did not see what was happening while Respondent Low was searching him. Ultimately, Respondents recovered contraband. (Tr. 401-02, 425-27, 430)

Lieutenant Kenan Akaydin testified that he had been trained in the use of force—including the definition of a chokehold—throughout his thirteen-year career with the Department and that he was working for the Chief of Detectives Investigative Unit (CDIU) when he was assigned the investigation into Respondents’ use of force. IAB sent the complaint to CDIU, where it was assigned to Akaydin. As part of his investigation, Akaydin reviewed CCRB’s documents and evidence, including the videos and CCRB interviews with Respondents and Ortiz. Akaydin then made a determination that Respondent Cordova had not employed a chokehold and it was thus “unfounded.” In particular, Akaydin based his conclusion on the

interview with Ortiz, in which he mostly complained about being struck in the ribs and said he could breathe. Only at the end of the interview did Ortiz briefly mention a chokehold, without providing much detail. After watching the video, Akaydin concluded that Respondent Cordova had used a “cross-body hold” or “seatbelt hold,” which was approved by the Patrol Guide.

Regarding the rest of the use of force in the matter, Akaydin and a supervisor determined that force was used but that it “was within Department guidelines and did not violate any Department rules.” Therefore, they exonerated Respondents on the allegations that the use of force was excessive. (Tr. 472-79, 481-84, 489)

CCRB introduced into evidence four videos of the subject incident, which are described below:

- Ortiz exits the building; as he is holding open the door to leave, Respondent Low walks in past him, then runs up the stairs (CCRB Ex. 4¹)
- 02:51:05-12—Ortiz runs, Respondent Reynoso chases him down and presses him against gate. Respondent Cordova follows and grabs Ortiz from behind. (CCRB Ex. 2)
- 02:51:12-41—Ortiz’s front is against the gate and Respondent Cordova is behind Ortiz, with his right hand initially behind Ortiz’s head. Respondent Cordova and Respondent Reynoso then turn Ortiz around; Respondent Cordova is between Ortiz and the gate and Respondent Cordova’s arm and wrist are up by Ortiz’s jaw. Respondent Cordova’s radio is visible in his hand. Respondent Reynoso is in front of Ortiz. As Respondent Cordova pulls Ortiz backwards, Respondent Cordova’s hand is against the left side of Ortiz’s face. The officers struggle with Ortiz in this position for several seconds. (CCRB Ex. 1)
- 02:51:41-2:52:26—Respondent Low approaches and grabs Ortiz from the front, while Respondent Cordova’s hand appears closer to Ortiz’s throat area. Ortiz leans forward and Respondent Reynoso presses Ortiz’s head against the gate. Twice, Ortiz moves his head away from the gate and Respondent Reynoso slams it back into the gate. While this is happening, Respondent Cordova changes his hold of Ortiz; he eventually has both arms wrapped around Ortiz’s torso. (*Id.*)
- 02:51:56-02:52:50—Respondent Reynoso uses his legs to press against Ortiz’s legs. Respondent Cordova continues holding Ortiz, now from the side, while Respondent Low grabs Ortiz’s left hand and attaches a handcuff and Respondent Reynoso grabs Ortiz’s right hand. Respondents pull Ortiz away from the gate and Respondent Low tries to trip him but Ortiz steps over his foot. Ortiz leans forward and falls onto his chest, while

¹ The time stamp on Ex. 4 does not correspond with the other videos.

Respondent Low and Respondent Reynoso continue holding the respective hands. (CCRB Exs. 1 and 2)

- 02:52:50-02:53:17—Respondent Low handcuffs Ortiz while he is on the ground. Respondent Low and Respondent Cordova then bring Ortiz to his feet. (CCRB Ex. 2)
- 02:53:17-02:55:41—Ortiz stands up, already in handcuffs. Respondents begin searching him. Respondent Low looks through his wallet. (CCRB Ex. 1) Meanwhile, Respondent Low inspects Ortiz's midsection while a light is shining on the area of his pants. Respondents continue touching Ortiz's chest and a light is shined toward his pants again. (CCRB Ex. 2)
- 2:55:41-50—Respondent Cordova strikes the area of Ortiz's leg or midsection with his knee. Ortiz stumbles towards the gate. (CCRB Exs. 2 and 3²)

Respondent Cordova

I will address the specifications in chronological order. Specification 2 charges Respondent Cordova with applying a chokehold to Ortiz while up against the gate. Patrol Guide § 221-01 contains a blanket prohibition on chokeholds, which it defines as “any pressure to the throat, carotid artery or windpipe, which may prevent or hinder breathing, or reduce intake of air or blood flow.” While Ortiz insisted at trial that Respondent Cordova choked him, Respondent Cordova denied doing so and asserted that his hand and the radio he was holding were up by Ortiz's jaw. At the outset, it must be noted that Ortiz was less than credible about the purported chokehold. He admitted, for example, that he never told the grand jury about the chokehold, offering that he was more fixated on the purported strip search. As embarrassing as a strip search in public would be, it is unrealistic that a complainant would only mention a strip search and not a chokehold, which could be a much more frightening experience.

This tribunal can review these competing narratives by examining the video evidence.

— Based on the videos, I credit Respondent Cordova's narrative. CCRB Ex. 1 provides the clearest —
angle of the purported chokehold. At first, Respondent Cordova has his hand and radio up by

² The time stamp on Ex. 3 appears to be incorrect by a little over two minutes.

Ortiz's jaw rather than his throat. This is clearly demonstrated as Respondent Cordova can be seen turning Ortiz's head, but not his neck, with his hand. If Respondent Cordova were grabbing his neck instead, the neck would also turn. In the next moment, Respondent Cordova's hand is closer to Ortiz's throat. However, Ortiz is leaning forward at that point, essentially pushing onto Respondent Cordova's wrist. In fact, Ortiz himself testified that he was slumping forward. It is unlikely that any pressure was being placed on the throat, and even if it were, this would be the result of Ortiz's leaning rather than Respondent Cordova's actions per se. This moment is also quite brief and was unlikely to have restricted breathing. Therefore, by a preponderance of the relevant, credible evidence, I find Respondent Cordova not guilty of Specification 2.

Specification 1 charges Respondent Cordova with wrongfully using force without police necessity when he kned Ortiz in the leg. Respondent Cordova acknowledged using his knee to strike Ortiz and CCRB Ex. 3 shows the moment where his knee connects with Ortiz's leg. Therefore, the inquiry turns to whether this use of force was necessary. I find that it was not.

Patrol Guide § 221-02 (11) requires officers to use "no more than the reasonable force necessary to gain control." Respondent Cordova claimed that he likely had some rationale, such as preventing the destruction of evidence, which caused him to use force in such a way. However, Respondent Cordova was unable to articulate exactly what Ortiz was doing to necessitate using force. At the point when Respondent Cordova kned Ortiz, Respondents had all managed to bring Ortiz away from the gate and handcuff him. Respondents needed to bring Ortiz to the RMP and Respondent Cordova's use of force did not further that goal. There is no evidence that Ortiz actually was trying to destroy evidence or otherwise posed a threat. Thus, Respondent Cordova's vague defense is dubious. Accordingly, I find by a preponderance of the

relevant, credible evidence that Respondent Cordova wrongfully used force by kneeling Ortiz in the leg, and find him guilty of Specification 1.

Respondent Reynoso

The sole specification against Respondent Reynoso charges him with wrongfully pushing Ortiz's head into a gate. The video shows that Respondent Reynoso did so multiple times while affecting the arrest. The issue is whether this use of force was proportional to the situation. I find that it was not.

Respondents all testified at various points that Ortiz was resisting arrest, tensing up his body and trying to avoid having his arms handcuffed. Certainly, force was needed on the part of all three Respondents to bring Ortiz under control and handcuff him. However, with three officers involved in the arrest, Respondent Reynoso's actions went beyond the reasonable force necessary to gain control, as stipulated by P.G. § 221-01. The same section, as in effect at the time of the incident, lists several factors for determining the reasonable level of force, including the subject's actions, the immediacy of the perceived threat, level of resistance and number of subjects relative to number of officers. At the time when Respondent Reynoso slammed Ortiz's head against the gate, Respondents had successfully pinned Ortiz, hence it was unlikely that he could flee and he posed less of a threat while up against the gate. Additionally, the three Respondents outnumbered the lone Ortiz, further reducing his potential to cause harm or escape. Respondents were attempting to handcuff him, but Respondent Reynoso's repeated strikes to his head went beyond the scope of that goal and escalated the use of force beyond what was reasonably necessary to gain control. Respondent Reynoso initially claimed that he was pushing Ortiz's upper body but the video shows otherwise, as he later admitted at trial. Instead,

Respondent Reynoso was slamming Ortiz's head into the metal gate repeatedly. In doing so, he created a significant risk of serious harm beyond any effort to control Ortiz's arms.

In recent cases, this tribunal has ruled that strikes to a subject's head can constitute excessive force even when the subject is struggling or refusing to be handcuffed (*See Disciplinary Case No. 2017-18154* [Apr. 21, 2020] [finding excessive force where respondent punched complainant, who was on the ground, despite complainant's "moving and twisting his body"]; *Disciplinary Case No. 2015-14379* [May 23, 2017] [finding excessive force where respondent punched an arrestee once while he was on the ground because he would not allow his right hand to be handcuffed]). Here, although Ortiz was not complying, he was pressed up against the wall by all three Respondents. Thus, Ortiz had a significantly reduced ability to run or harm Respondents or others at the moment when Respondent Reynoso used force by banging his head on the gate. Accordingly, based on this precedent and the clear video evidence, I find Respondent Reynoso guilty of the sole specification.

Respondent Low

The sole specification against Respondent Low charges him with wrongfully strip-searching Ortiz. Respondent Low admits that he searched Ortiz, but insists that he merely conducted a field search for contraband rather than a strip search. The inquiry turns on whether Respondent Low's actions fit the definition of a field search or a strip search under P.G. § 208-05.

A field search is described as a "methodical external body examination of the arrested person conducted immediately after apprehension to find weapons, evidence or contraband."

The Patrol Guide further stipulates, "If an unusual object is detected, the officer will reach into or

under the clothing to remove it.” A strip search, on the other hand, is more invasive. It constitutes, *inter alia*, “any search in which an individual’s undergarments...and/or private areas are exposed.” Supervisory approval is required for a strip search and the search “shall be conducted only...in a secure area, in utmost privacy.”

In this matter, I find that a strip search, rather than a field search, occurred. A field search is intended to begin with a frisk of a subject; if the MOS feels something unusual, he or she may reach inside clothing to retrieve it. Respondent Low initially told CCRB that he had not felt anything before reaching into Ortiz’s pants. According to Respondent Low’s own testimony at trial, he was searching for contraband near Ortiz’s groin area because he had seen him remove apparent narcotics from the same area. More specifically, Respondent Low had seen Ortiz remove a bag from the back of his waistband. However, he admitted that he did not feel anything unusual at the back of Ortiz’s pants when he patted there. Respondent Low then proceeded to search the front of Ortiz’s groin area. Although he testified at trial that he felt an object at the front, he did not articulate a reason why the object at the front of the pants felt like a weapon or contraband. Moreover, this testimony also contradicts his initial statement to CCRB. Therefore, I do not credit Respondent Low’s representation that he felt something suspicious in the pants during the frisk which later he reached for.

It is more likely than not that Respondent Low did not detect the object by feeling it, as contemplated by the Patrol Guide’s description of a field search. Rather, Respondent Low needed to pull back the pants and underwear while a colleague used a flashlight to increase visibility, in order to examine the area and find the drugs he was looking for. The use of the flashlight, in particular, and the exposing of underwear, demonstrate both the intrusiveness of the search and the fact that he went far beyond an ordinary frisk and field search. Therefore,

Respondent Low conducted a strip search *See Disciplinary Case No. 2014-12644* (June 27, 2016) (respondent found guilty of conducting a strip search without sufficient legal authority, wherein she directed a prisoner to lift up her shirt and shake out her bra as part of a search for contraband; she had not received supervisory approval).

Considering that Respondent Low conducted a strip search, he needed supervisory approval in advance and needed to do so in “utmost privacy” rather than in public. However, he did not ask a supervisor for permission to do so nor was the search in a private facility. Although there is no evidence that any third parties witnessed the search, a street corner definitely does not meet the standard of privacy set by the Patrol Guide. Under these circumstances, Respondent Low’s offered rationale that Ortiz could have destroyed any evidence that remained in his pants does not justify a strip search, particularly because Ortiz was already handcuffed at that point. Accordingly, I find that Respondent Low abused his authority by conducting the strip search of Ortiz and find him guilty of the sole specification.

PENALTY

In order to determine appropriate penalties, the Tribunal, guided by the Department Disciplinary System Penalty Guidelines (“Disciplinary Guidelines”), considered all relevant facts and circumstances, including any aggravating and mitigating factors established in the record. Respondents’ employment histories were also examined (*See* 38 RCNY § 15-07). Information from Respondents’ personnel records that was considered in making this penalty recommendation is contained in attached memoranda.

Respondent Reynoso, who was appointed to the Department on July 11, 2005, has been found guilty of using excessive force by slamming Ortiz’s head into the metal gate. CCRB

recommended a penalty of 10 suspension days and 10 penalty days, which is the penalty enumerated for cases of excessive, non-deadly force resulting in injury. The Patrol Guide defines physical injury as “impairment of physical condition, and/or substantial protracted pain, including: minor swelling, contusions, lacerations, and/or abrasions” (emphasis added) (P.G. § 221-03). Additionally, the New York Penal Law defines physical injury as “impairment of physical condition or substantial pain” (N.Y.P.L. § 10.00). Courts have described “substantial pain as “more than slight or trivial” and explained that it does not need to be “severe or intense” to meet the threshold. *People v. Chiddick*, 8 N.Y.3d 445 (2007) (physical injury and substantial pain demonstrated where bite caused fingernail to crack and bleed and victim suffered moderate pain).

Ortiz testified that he experienced pain and lightheadedness and had bruises on his head. The bruises alone meet the criteria for injury and it is credible that Ortiz suffered substantial pain based on the video of his head slamming into the metal gate multiple times. Accordingly, under the Patrol Guide and Penal Law, I find that under the Disciplinary Guidelines, Respondent Reynoso’s actions constitute “non-deadly force against another” resulting in injury, for which the presumptive penalty is 10 penalty days and 10 suspension days. I see no reason to depart from the presumptive penalty, particularly because I credit Ortiz’s claims of pain and bruising based on the images depicted in the video. Therefore, I recommend that Respondent Reynoso forfeit 10 vacation days and that he be suspended for 10 days without pay.

Respondent Cordova, who was appointed to the Department on April 15, 1997, has been found guilty of excessive force in kneeing Ortiz in the leg. For that charge alone, CCRB

recommended that he be terminated.³ Unlike the head injuries, I do not credit Ortiz's testimony that he suffered bruising of his thigh. CCRB did not provide medical or photographic documentation of the bruising, and the video does not demonstrate the obvious potential for injury as it does with Respondent Reynoso's actions. Therefore, I determine that Respondent Cordova's kneeling Ortiz constituted non-deadly force resulting in no injury.

On the one hand, pursuant to the Disciplinary Guidelines, there were two mitigating factors present: Respondent Cordova's use of knee strikes was "relatively brief or momentary" and was "incidental to an otherwise appropriate use of force and did not result in harm." The strikes, while excessive, were quick and part of a much longer process of apprehension. Beyond the knee to the leg, Respondent Cordova's overall use of force in apprehending Ortiz was appropriate under the circumstances. On the other hand, Respondent Cordova has significant prior discipline, having forfeited 60 vacation days and having been placed on one-year dismissal probation in 2003 for impeding a Department investigation, by failing to volunteer information concerning a shooting incident. Additionally, at the point when Respondent Cordova used the knee strikes, Ortiz was in handcuffs; use of force against a handcuffed subject is also an aggravating factor. The presumptive penalty for non-deadly force resulting in no injury is 10 penalty days. However, I find that, when balancing the mitigating and aggravating factors, a somewhat higher penalty than the presumptive penalty should be applied here. Accordingly, I recommend that Respondent Cordova forfeit 15 vacation days.

Respondent Low, who was appointed to the Department on January 10, 2005, has been found guilty of conducting an unauthorized strip search, for which CCRB recommends a penalty

³ Although Respondent Cordova has only been found guilty of one specification, CCRB recommended termination for each specification by itself.

of 20 suspension days and one-year dismissal probation. The presumptive penalty under the Disciplinary Guidelines is 20 suspension days and one-year dismissal probation. Potential aggravating factors in abuse of authority cases include “invasiveness of the encounter,” which is present here. Pulling back Ortiz’s pants and shining a flashlight on his genital area, in public, without supervisory approval, was particularly invasive and interfered with his right to privacy. Accordingly, a slightly higher penalty is warranted. I recommend that Respondent Low be suspended for 25 days without pay, and that he be DISMISSED from the New York City Police Department, but that his dismissal be held in abeyance for a period of one (1) year pursuant to Section 14-115 (d) of the Administrative Code, during which time he remains on the force at the Police Commissioner’s discretion and may be terminated at any time without further proceedings.

Respectfully submitted,



Nancy R. Ryan
Assistant Deputy Commissioner Trials





POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: SUMMARY OF EMPLOYMENT RECORD
DETECTIVE MANUEL CORDOVA
TAX REGISTRY NO. 918880
DISCIPLINARY CASE NO. 2019-20070

Respondent was appointed to the Department on April 15, 1997. On his last three annual performance evaluations, Respondent received 4.5 overall ratings of “Extremely Competent/Highly Competent” in 2018, 2019 and 2020. Respondent has been awarded two medals for Excellent Police Duty, one medal for Meritorious Police Duty and one Honorable Mention.

In 2003, Respondent forfeited 60 vacation days and was placed on one-year dismissal probation for (i) impeding a Department investigation by failing to volunteer information concerning a shooting incident, in which two people received gunshot wounds and two others were injured and (iii) failing to list a firearm on his force record.

For your consideration.

Nancy R. Ryan
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: SUMMARY OF EMPLOYMENT RECORD
DETECTIVE RAYMOND LOW
TAX REGISTRY NO. 936985
DISCIPLINARY CASE NO. 2019-20071

Respondent was appointed to the Department on January 10, 2005. On his last three annual performance evaluations, he received a 5.0 overall rating of “Extremely Competent” in 2020 and 4.5 ratings of “Extremely Competent/Highly Competent” in 2018 and 2019. He has been awarded one medal for Meritorious Police Duty.

Respondent has no disciplinary record.

For your consideration.

Nancy R. Ryan
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: SUMMARY OF EMPLOYMENT RECORD
DETECTIVE XAVIER REYNOSO
TAX REGISTRY NO. 939302
DISCIPLINARY CASE NO. 2019-20072

Respondent was appointed to the Department on July 11, 2005. On his last three performance evaluations, he received a 4.5 overall rating of “Extremely Competent/Highly Competent” in 2019, a 4.0 rating of “Highly Competent” in 2018 and a 3.5 rating of “Highly Competent/Competent” for 2017.

Respondent has no disciplinary record.

For your consideration.

Nancy R. Ryan
Assistant Deputy Commissioner Trials